

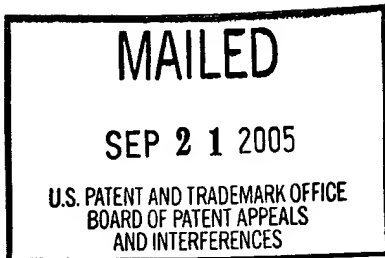
The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

**UNITED STATES PATENT AND TRADEMARK OFFICE**

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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

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Ex parte JAMES M. CANTONIS

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Appeal No. 2005-1202  
Application No. 09/715,073

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ON BRIEF

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Before FRANKFORT, NASE and BAHR, Administrative Patent Judges.  
BAHR, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's rejection of claims 1-58, which are all of the claims pending in this application.

BACKGROUND

The appellant's invention relates to an elongated poly sponge covered by a chamois provided with holes. A copy of the claims under appeal is set forth in the appendix to the appellant's brief.

### ***The Applied Prior Art***

The examiner relied upon the following prior art references of record in rejecting the appealed claims:

Sewell	3,083,392	Apr. 2, 1963
Giallourakis	4,821,360	Apr. 18, 1989
Martin et al. (Martin)	5,671,498	Sep. 30, 1997
Hale	5,918,341	Jul. 6, 1999

### ***The Rejections***

The following rejections are before us for review.

- (1) Claims 1, 4-9 and 18 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Martin.
- (2) Claim 15 stands rejected under 35 U.S.C. § 103 as being unpatentable over Martin.
- (3) Claims 39-56 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Giallourakis.
- (4) Claims 1, 5-11, 13, 14, 18, 22, 23, 27-38, 57 and 58 stand rejected under 35 U.S.C. § 102(b) as being anticipated by or, in the alternative, under 35 U.S.C. § 103 as being unpatentable over Giallourakis.
- (5) Claims 12 and 16 stand rejected under 35 U.S.C. § 103 as being unpatentable over Giallourakis.
- (6) Claims 24 and 25 stand rejected under 35 U.S.C. § 103 as being unpatentable over Giallourakis in view of Hale.

(7) Claim 26 stands rejected under 35 U.S.C. § 103 as being unpatentable over Giallourakis in view of Sewell.

(8) Claims 1-3, 5-9, 17-19 and 21 stand rejected under 35 U.S.C. § 102(b) as being anticipated by or, in the alternative, under 35 U.S.C. § 103 as being unpatentable over Sewell.

(9) Claims 16 and 20 stand rejected under 35 U.S.C. § 103 as being unpatentable over Sewell.

Rather than reiterate the conflicting viewpoints advanced by the examiner and the appellant regarding the above-noted rejections, we make reference to the answer (mailed October 4, 2004) for the examiner's complete reasoning in support of the rejections and to the brief (the substitute brief filed August 4, 2004) and reply brief (filed October 19, 2004) for the appellant's arguments thereagainst.

#### OPINION

In reaching our decision in this appeal, we have given careful consideration to the appellant's specification and claims, to the applied prior art references, and to the respective positions articulated by the appellant and the examiner. As a consequence of our review, we make the determinations which follow.

***Rejection (1)***

With regard to the rejection of claims 1, 5-7, 9 and 18 as being anticipated by Martin, the appellant's only arguments are (1) Martin's scrubbing device is not "wringable," (2) Martin's teaching of a mildly abrasive working surface "has nothing to do with the claimed invention," (3) Martin discloses a top panel separated from a bottom panel and thus lacks "at least one rectangular piece" forming the cover and (4) Martin requires the foam to be removed from the cover for use on a surface and thus has nothing to do with a wringable cover enclosing the wringable foam that can both be simply wrung out after use. See pages 7-8 of the brief.

The basis of appellant's argument that Martin's scrubbing device is not "wringable" appears to be that the mesh covering is itself made of hydrophobic material and the device comprises a base panel that can be gripped by the hand. This argument is not persuasive because neither of these characteristics would prevent the Martin device from being squeezed and/or twisted so as to wring out the contents of the pad. While the covering itself does not absorb moisture, the openings therein allow passage of moisture into and out of the sponge within the mesh.

The appellant's second and third arguments are likewise not well taken. As for the second argument, while appellant's claims 1, 5-7, 9 and 18 do not require a mildly abrasive cover surface, neither do they exclude such a surface. As for the third argument, the claim terminology "at least one rectangular piece" encompasses one rectangular piece or more than one rectangular piece. Thus, even if the appellant is

correct that Martin's sleeve 14 is formed of at least two panels, the appellant's claims 1, 5-7, 9 and 18 are still readable thereon.

The appellant's argument that Martin requires the foam material to be removed from the cover for use on a surface finds no support in the reference and appears to be inconsistent with Martin's teachings. First, the foam body 12 of Martin is disclosed as being enclosed or encased within the sleeve 14 and thus would not be readily removable therefrom. Second, the sleeve 14 has a mildly abrasive working surface which gives the scrubbing device its scrubbing or exfoliating properties. To remove that sleeve in use of the scrubbing device would not make sense to one of ordinary skill in the art reading Martin's disclosure.

For the foregoing reasons, the appellant's arguments with respect to the rejection of claims 1, 5-7, 9 and 18 as being anticipated by Martin are not persuasive. The rejection is thus sustained with respect to these claims.

With respect to claim 8, which depends from claim 7 and further recites a pocket formed by joints along the side-edges and/or end-edges of the at least one rectangular sheet, the appellant argues that Martin requires both end and side stitches to join the top and bottom panels. Martin discloses, in column 3, lines 45-48, that "the second layer may be formed as a sleeve operative to receive the foam pad therein, and, if desired, the opposite ends of the sleeve may be fastened together." The sleeve formed for receipt of the pad is a "pocket" as called for in claim 8. That the sleeve may, if desired, also be stitched together at the free ends does not render the claim unreadable

on Martin's scrubbing device. The rejection of claim 8 as being anticipated by Martin is sustained.

The rejection of claim 4 as being anticipated by Martin, however, is not sustained. Claim 4 requires holes spaced on one-half inch centers. Martin, on the other hand, discloses a mesh cover material having a mesh count of approximately 4000 meshes per square inch and teaches that, while other materials can be used, it is desirable that the mesh openings have less than a size of 1/16 inch (column 5, lines 32-46). The examiner's position (answer, page 3) that the hole spacing limitation of claim 4 would be met for a cover material having a mesh opening size of 1/16 inch, because the spacing between every eighth opening is one-half inch, is unreasonable.

### ***Rejection (2)***

Claim 15 recites that a length of the cover is about thirty seven and three-quarter inches and a width is about six and one-quarter inches. Martin does not expressly disclose dimensions of the sleeve 14 or the scrubbing device. Martin discloses, in Figure 20, a scrubbing device comprising a sponge 232 partially covered by the mildly abrasive mesh material 220 and covered on one face thereof by a band 230 of terry cloth material having strap ends 214, 218 and points out that the strap ends are useful by an individual for scrubbing his/her back since the band 230 is sized so that strap ends 214 and 218 can be readily grasped and manipulated so that the scrub pad 202 may be manipulated against the back (column 9, line 58, through column 10, line 5). The examiner contends on page 8 of the answer that it would have been obvious for

one of ordinary skill in the art to modify Martin's scrubbing device so that the cover has a length of about 37 1/4 inches<sup>1</sup> and a width of about 6 1/4 inches since those dimensions are suitable for cleaning a human back. Given the dimensions of a typical human back, the examiner's position appears reasonable. Specifically, it would have been obvious to provide Martin's scrubbing device with a cover, including the band 230, having a length and width as recited in claim 15 so that the ends 214, 218 may be readily grasped and manipulated so that the scrub pad 202 may be manipulated against the back. The examiner's rejection is therefore sustained.

### ***Rejection (3)***

Giallourakis discloses a polishing pad formed by inserting a poly sponge into a pocket formed of loosely knitted material. With respect to claim 39, the appellant argues that Giallourakis' cover lacks a plurality of "holes" (brief, page 10). We presume that the appellant intended to refer to "openings" rather than holes, inasmuch as claim 39 recites "openings" and not holes. In any event, by disclosing a pocket of "loosely knitted material" and unambiguously illustrating such material in Figure 5 with openings defined by the looped fabric strands 8, Giallourakis provides express disclosure of a cover having a plurality of openings therein. As the examiner's rejection is based on an express disclosure of openings by Giallourakis, the appellant's argument on pages 10-11 of the brief with regard to extrinsic evidence establishing inherency is inapposite. The rejection of claim 39 as being anticipated by Giallourakis is sustained.

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<sup>1</sup> We presume that the examiner actually intended a 37 3/4 inch length as recited in claim 15.

The rejection of claims 40-47 as being anticipated by Giallourakis is also sustained. As discussed above, the loosely knitted material of Giallourakis' pocket has openings defined by the looped strands 8. These openings are disposed throughout the cover, including each of the locations recited in claims 40-47.

The appellant argues with respect to claims 48-56 that Giallourakis does not describe or teach the claimed connections along the different sides (brief, page 12). Giallourakis discloses a pocket formed either by stitching three sides of two sheets 4, 6 (Figures 1 and 2) or folding a single sheet and then stitching two of the remaining three sides (Figures 1A and 2A) and thus fully responds to each of the limitations recited in claims 48-56. The rejection of these claims as being anticipated by Giallourakis is thus sustained.

#### ***Rejection (4)***

In rejecting claims 1, 5-11, 13, 14, 18, 22, 23, 27-38, 57 and 58 as being anticipated by or unpatentable over Giallourakis, the examiner points out that, although Giallourakis does not disclose the specific length and width of the polishing pad, it appears in Figures 3 and 4 that the length is approximately three times greater than the width. Thus, according to the examiner, it would have been obvious to one of ordinary skill in the art to modify the length or width of Giallourakis to provide the user with a sponge that can be gripped easily or to ergonomically clean narrow areas (answer, page 7).



With regard to claim 1, the appellant argues, in the paragraph bridging pages 17 and 18, that:

Giallourakis does not teach nor suggest an elongated wringable pad comprising an absorbent material, a cover enclosing the absorbent material, the cover comprising first and second elongated opposite side portions disposed between top and bottom elongated portions, and first and second opposite end portions disposed between the top and bottom elongated portions and between the first and second elongated side portions, the absorbent material having a complementary shape for fitting within the cover. Furthermore, totally absent from Giallourakis is the cover having a plurality of openings for wringing-out contents of the pad by twisting along the length of the pad. Thus, the reference cannot anticipate nor render obvious the claimed invention.

This argument is not commensurate in scope with claim 1, which does not recite the cover comprising first and second elongated opposite side portions, top and bottom elongated portions and first and second opposite end portions disposed between the top and bottom elongated portions and between the first and second side portions and further does not recite a cover enclosing the absorbent material. Giallourakis does disclose an elongated polishing pad comprising a poly sponge inserted into a pocket of loosely knitted material having a plurality of openings defined within looped fabric strands 8, as illustrated in Figure 5. The appellant's argument is thus not persuasive that claim 1 is neither anticipated by nor unpatentable over Giallourakis. The rejection of claim 1 is sustained.

With respect to claims 5, 18, 22 and 23, the appellant argues that Giallourakis does not teach an elongated wringable sponge in the cover. The poly sponge 2 is

certainly elongated and appears fully capable of being squeezed and twisted to wring out the contents thereof. The rejection of claims 5, 18, 22 and 23 is thus also sustained.

With respect to claims 6-10, the appellant argues that Giallourakis has an open-mouthed polishing pad. Indeed, the pocket of Giallourakis has an opening at one end provided with an elastic band 13 which extends around the entire opening and is sewn so that when the band is released, the opening is elastically drawn shut as shown in Figure 4. Even when drawn shut, a small opening remains at one end. Nevertheless, nothing in claims 6-10 excludes an open mouth in the cover. The appellant's argument is thus not persuasive of any error in the examiner's rejection. The rejection of claims 6-10 is sustained.

Giallourakis discloses forming the pocket from a single rectangular piece by folding the piece end to end and then sewing any two of the remaining three sides together and thus teaches or suggests the subject matter recited in each of claims 11, 13 and 14. The rejection of these claims is sustained.

With respect to claims 27-29, the appellant argues that Giallourakis fails to teach or suggest the plural pieces as claimed (brief, page 20). We understand this argument to be directed to the recitation of at least four pieces forming the cover in claim 22, from which claims 27-29 ultimately depend. As the examiner points out on page 20 of the answer, Giallourakis discloses formation of the pocket with two similar rectangular sheets and further that each such sheet can consist of a double layer of loosely knit

material. According to Giallourakis, each layer is independent from each other and only interconnected along the peripheral edges when the pocket is sewn. See column 3, lines 35-43. As such, Giallourakis discloses the four pieces required to respond to the "at least four pieces forming the cover" limitation. The rejection of claims 27-29 is thus sustained.

With respect to claims 30-32, the appellant argues that Giallourakis fails to teach or suggest a wringable pad with the defined seams (brief, page 20). Our opinion with regard to the "wringable" limitation is addressed above. As for the seams defined in claims 30-32, this arrangement is shown in Figure 3, with the pocket turned inside out so that the seams point inward to provide a smooth outer surface. See also column 4, lines 6-9, with regard to the inside-out limitation. The rejection of claims 30-32 is sustained.

The appellant's argument, with respect to claim 33, that Giallourakis fails to teach or suggest an elongated poly sponge inserted into a pocket (brief, page 20) is wholly without merit. As discussed above, Giallourakis expressly discloses a poly sponge (column 2, line 12) and repeatedly discloses its insertion into the pocket (column 1, line 57; column 2, lines 13-14 and line 18), even illustrating such in Figure 3. It follows that the rejection of claim 33 is sustained.

With respect to claims 34-36, the appellant argues that "Giallourakis does not have plural pieces nor the central connections as defined in claim 34" (brief, page 21). As discussed above, the formation of the pocket with four rectangular pieces is

disclosed by Giallourakis in column 3, lines 35-43, the central connections being formed when the layers are sewn together (column 3, line 45 *et seq.*). The rejection of these claims is sustained. Claim 38 depends from claim 36 and further recites that at least one of the edges joined together has outward facing seams. Such outward facing seams are illustrated in Figure 2. The rejection of claim 38 is thus also sustained.

Claim 37 requires that the cover completely cover the absorbent material. As discussed above, Giallourakis' pocket has an opening which is substantially, but not completely, shut by the elastic band 13 and thus does not completely cover the absorbent material (sponge) as called for in claim 37. The rejection of claim 37 is thus not sustained.

The rejection of claims 57 and 58 is not sustained. The length to width ratio of the pocket of Giallourakis appears to be closer to two to one than three to one and there is no suggestion in Giallourakis to modify this ratio as called for in claims 57 and 58. The mere fact that the prior art could be so modified would not have made the modification obvious unless the prior art suggested the desirability of the modification. See In re Mills, 916 F.2d 680, 682, 16 USPQ2d 1430, 1432 (Fed. Cir. 1990); In re Gordon, 733 F.2d 900, 902, 221 USPQ 1125, 1127 (Fed. Cir. 1984).

### ***Rejection (5)***

The appellant argues, on page 22 of the brief, that Giallourakis does not teach or suggest the feature recited in claim 12 that "the at least one rectangular sheet has a fold between the side-edges about an axis forming a pocket having equal halves joined

together along the end-edges." This argument is not well taken. While Figure 2A illustrates the fold along a side-edge and not between side-edges as claimed, Giallourakis discloses in column 3, lines 27-31, that,

[i]n order to form the pocket, it is only necessary that two of the four sides be sewn together, since one of the four sides constitutes a contiguous border between the two halves, as defined by the fold axis 5. It is possible to sew together any two of the remaining three sides.

In accordance with those teachings, Giallourakis discloses either a pocket formed with the fold disposed on one side-edge, as illustrated in Figure 2A, or a pocket formed with the fold disposed between two sewn side-edges, thus fully responding to the feature recited in claim 12. The rejection of claim 12 is sustained.

Claim 16 recites that the cover has a length of about eighteen and three-quarter inches and a width of about twelve and one-half inches. Giallourakis does not specify the dimensions of either the polishing pad or the pocket thereof. The formation of the pocket in accordance with Figures 1A and 2A from a rectangular sheet 1 having dimensions as recited in claim 12 would yield a polishing pad having dimensions of about ten or so inches by about six inches by about three inches, with the fold located on the side of the pocket, or having dimensions of about eight inches by about four inches by about two inches, with the fold located on the end of the pocket. Inasmuch as a pad having such dimensions appears appropriate for use as a polishing or buffing pad, a cover (rectangular sheet 1) having the dimensions recited in claim 16 would have been obvious to one of ordinary skill in the art. The following quotation from In re

Woodruff, 919 F.2d 1575, 1578, 16 USPQ2d 1934, 1936-37 (Fed. Cir. 1990), is applicable here:

The law is replete with cases in which the difference between the claimed invention and the prior art is some range or other variable within the claims. [citations omitted] These cases have consistently held that in such a situation, the applicant must show that the particular range is *critical*, generally by showing that the claimed range achieves unexpected results relative to the prior art range.

In this case, the appellant has not come forth with evidence that the recited cover dimensions achieve unexpected results relative to the pocket of Giallourakis.<sup>2</sup> The rejection is sustained.

### ***Rejection (6)***

The examiner's position in rejecting claims 24 and 25 as being unpatentable over Giallourakis in view of Hale is that it would have been obvious to one of ordinary skill in the art at the time of the appellant's invention to use rectangular pieces of about nine and one half inches long and six and one-quarter inches wide to form the pocket to make the pad an appropriate and ergonomic size to be hand held (answer, pages 9 and 10), in light of Hale's teaching of nine inches by four inches as an appropriate size for manual cleaning, buffing and other similar operations (column 1, lines 15-17; column 2, lines 8-10). The appellant does not specifically dispute this position but, rather, argues, on page 26 of the brief, that "there is no showing as to where in the references there is

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<sup>2</sup> In this regard, we note that, although the appellant's specification (page 2) lists advantages of a sixteen and one-half inch long by four inch wide pad over a seven inch long by four inch wide pad, the recited cover dimensions do not necessarily achieve a pad of such dimensions.

a teaching or a suggestion to adapt the Giallourakis removable sponge within the Hale foldable sleeve and arrive at the claimed invention." This argument is not persuasive as it does not address the modification proposed by the examiner. The examiner has not proposed incorporation of the Giallourakis sponge in the folded cloth of Hale.

Rather, as discussed above, the examiner's proposed modification of Giallourakis merely involves sizing of the rectangular sheets or layers of Giallourakis in accordance with the size teachings of Hale. The rejection is sustained.

#### ***Rejection (7)***

In rejecting claim 26 as being unpatentable over Giallourakis in view of Sewell, the examiner relies on Sewell for a suggestion to use chamois as the pocket material in place of the loosely knitted material disclosed by Giallourakis. The examiner's stated motivation for the modification is that the selection of a known material based upon its suitability for the intended use is a matter of obvious engineering choice within the skill of the art. In re Leshin, 277 F.2d 197, 199, 125 USPQ 416, 418 (CCPA 1960). See page 10 of the answer. Sewell, however, discloses chamois as a suitable drying material, while Giallourakis is directed to a polishing pad for buffing wax. Accordingly, Sewell's teaching of chamois as a suitable drying material has no applicability to the polishing pad of Giallourakis and, as such, would not have suggested the modification proposed by the examiner. The rejection is not sustained.

***Rejections (8) and (9)***

Claims 1-3, 5-9, 17-19 and 21 stand rejected as being anticipated by or, in the alternative, as unpatentable over Sewell. According to the examiner, although the length and width are not specifically disclosed, it appears in Figure 1 that the length is approximately three times greater than the width. The examiner concludes that it would have been obvious to one of ordinary skill in the art "to modify the width or length of Sewell to provide the user with a sponge that can be gripped easily or to ergonomically clean narrow areas" (answer, page 7).

The appellant argues, on page 16 of the brief, that nothing in Sewell teaches or suggests a pad with a cover enclosing an absorbent material with the cover having holes for expressing contents from the pad. We do not agree with the appellant. Sewell discloses a cleaning device, for washing and drying, having a combination sponge and chamois, the device comprising a block of artificial sponge 2 having a cover of suitable drying material, such as chamois skin 3, mounted thereon, as by folding the margin under the second block and anchoring the cover to the block with water proof glue. As illustrated in Figure 1, the chamois skin 3 is provided with perforations 4, 4 for draining water from the sponge. The drying is accomplished by squeezing the excess moisture out of the block and applying the chamois side to the surface to be cleaned. The passageways created by the perforations will permit the entire block to be subjected to squeezing or wringing through a wringer to remove excess moisture. To the extent that the appellant is arguing that Sewell's chamois skin does not completely



enclose the block 2, this is not commensurate in scope with any of claims 1-3, 5-9, 17-19 and 21, which do not require complete enclosure of the block. As the appellant has not made any other argument with regard to claim 1, the rejection of claim 1 is sustained.

With regard to claims 2 and 3, which recite that the holes are die-cut and punched holes, respectively, Sewell does not disclose how the perforations 4, 4 are formed in the chamois skin. The patentability of a product does not depend on its method of production. If the product in a product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior art product was made by a different process. In re Thorpe, 777 F.2d 695, 697, 227 USPQ 964, 966 (Fed. Cir. 1985). The lack of physical description in a product-by-process claim makes determination of the patentability of the claim more difficult, since in spite of the fact that the claim may recite only process limitations, it is the patentability of the *product* claimed and *not* of the recited process steps which must be established. Therefore, when the prior art discloses a product which reasonably appears to be either identical with or only slightly different than a product claimed in a product-by-process claim, a rejection based alternately on either 35 U.S.C. § 102 or 103 is eminently fair and acceptable. As a practical matter, the PTO is not equipped to manufacture products by the myriad of processes put before it and then obtain prior art products and make physical comparisons therewith. In re Brown, 459 F.2d 531, 535, 173 USPQ 685, 688 (CCPA 1972). The appellant has not provided any evidence or

explanation to establish that the use of die-cutting or punching would produce holes having materially different properties as compared with other methods of perforation forming in the chamois skin of Sewell for the washing and drying application disclosed by Sewell. Thus, the provision of either die-cut or punched perforations 4, 4 in Sewell's chamois skin would have been obvious to one of ordinary skill in the art. The rejection of claims 2 and 3 is sustained.

With respect to claim 5, the appellant argues, on page 15 of the brief, that Sewell "does not teach nor suggest an elongated wringable pad having a cover enclosing the elongated poly sponge." It is not apparent from the appellant's argument precisely what the appellant deems to be lacking in Sewell. To the extent that this is an argument that the chamois skin 3 does not completely enclose the entirety of the block 2, it is not persuasive, as claim 5 does not require complete enclosure by the cover, much less by the rectangular piece having the holes. As for the limitation that the absorbent material is a poly sponge, the disclosure by Sewell of a "sponge, preferably of the artificial type" (column 1, lines 44-45) would have conveyed to one of ordinary skill in the art a polymer or "poly" sponge.<sup>3</sup> For the foregoing reasons, we do not find the appellant's argument persuasive with regard to claim 5. The rejection of claim 5 is sustained.

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<sup>3</sup> Insofar as the references themselves are concerned, we are bound to consider the disclosure of each for what it fairly teaches one of ordinary skill in the art, including the inferences which one of ordinary skill in the art would reasonably have been expected to draw therefrom. See In re Boe, 355 F.2d 961, 965, 148 USPQ 507, 510 (CCPA 1966) and In re Preda, 401 F.2d 825, 826, 159 USPQ 342, 344 (CCPA 1968).

The rejection of claim 6 is also sustained. The appellant's only specific argument with respect to claim 6, which further recites that the at least one piece is at least one rectangular piece, is that Sewell's anchoring of two blocks of sponges with one block covered with chamois material and folded under the second block "has nothing to do with the elongated wringable pad with its rectangular sheet forming the cover enclosing the sponge" (brief, page 15). The chamois material covers the block on all but one face and claim 6 does not require the rectangular sheet to completely enclose the entirety of the sponge.

With respect to claims 7-9 and 17, the appellant's only specific argument (brief, page 16) is that nothing in Sewell teaches or suggests sewing the side-edges/end-edges of the sheet and receiving the sponge within the cover. Inasmuch as claims 7, 8 and 17 do not call for sewn edges, this argument is not persuasive as to those claims. The rejection is thus sustained as to claims 7, 8 and 17. The rejection of claim 9, however, is not sustained, as Sewell provides no teaching or suggestion to sew the side-edges or end-edges of the chamois skin in the Figure 1 embodiment or to provide holes in the chamois skin itself in the embodiments of Figures 2 and 3.

Claim 18 depends from claim 1 and further recites that plural pieces form the cover. Sewell's Figure 1 embodiment comprises a cover including a chamois skin 3 and a sponge block 1 enclosing the sponge 2. The rejection is sustained.

The rejection of claims 19 and 21 is not sustained. Simply stated, Sewell provides no teaching or suggestion to provide plural pieces of chamois, man-made or

otherwise, to cover the sponge 2. It likewise follows that the rejection of claim 20, which depends from claim 19 and further recites that the plural pieces are made of sheep-skin chamois, as being unpatentable over Sewell is not sustained.

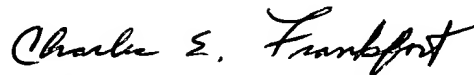
The rejection of claim 16 as being unpatentable over Sewell is sustained. The appellant's only argument (brief, page 24) is that "[n]othing in Sewell describes, teaches or suggests a pad with a cover enclosing an absorbent material with the cover having holes for expressing contents from the pad, in which the cover is sheep-skin chamois." This argument is not commensurate in scope with claim 16, which does not require that the cover be sheep-skin chamois. It is well established that limitations not appearing in the claims cannot be relied upon for patentability. In re Self, 671 F.2d 1344, 1348, 213 USPQ 1, 5 (CCPA 1982).

### CONCLUSION


In summary, rejection (1) is sustained as to claims 1, 5-9 and 18 and reversed as to claim 4; rejection (2) is sustained; rejection (3) is sustained; rejection (4) is sustained as to claims 1, 5-11, 13, 14, 18, 22, 23, 27-36 and 38 and reversed as to claims 37, 57 and 58; rejection (5) is sustained; rejection (6) is sustained; rejection (7) is reversed; rejection (8) is sustained as to claims 1-3, 5-8, 17 and 18 and reversed as to claims 9, 19 and 21; and rejection (9) is sustained as to claim 16 and reversed as to claim 20. The examiner's decision is affirmed as to claims 1, 5-18, 22-25, 27-36 and 38-56 and reversed as to claims 4, 19-21, 26, 37, 57 and 58.

No time period for taking any subsequent action in connection with this appeal  
may be extended under 37 CFR § 1.136(a).

AFFIRMED-IN-PART



CHARLES E. FRANKFORT  
Administrative Patent Judge



JEFFREY V. NASE  
Administrative Patent Judge



JENNIFER D. BAHR  
Administrative Patent Judge

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